IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

Crl.Rev.Pet.No. 192 of 1999()

CRA.259/1995 of SESSIONS COURT, THALASSERY DT.5.1.99
CC.692/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA
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REVN. PETITIONER: APPELLANT/ ACCUSED

K.P.AUGUSTINE, S/O ULAHANNAN,
AGED 43 YEARS, DRIVER,
MANATHANA AMSOM DESOM.

BY ADV. SMT.BINDU K. NAIR
SMT.BIJI JOZLET GEORGE

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl.R.P.NO. 192 OF 1999

Dated, 15th June , 2007

ORDER

The revision petitioner stands convicted for the offences under sections 279, 337 and 338 IPC and sentenced to undergo R.I for six months for the offence under section 279 IPC, R.I for six months for the offence under section 337 IPC and R.I for one year for the offence under section 338 IPC and he is also directed to pay a compensation of Rs.25,000/- to PW-1 and in default, to undergo R.I for a period of nine months. He is further ordered to pay a compensation of Rs.5000/- to PW-2 and in default, to undergo R.I for three months.

2. The evidence adduced in the matter consisted of the testimony of PWs 1 to 8 and Exts.P1 to P11. The prosecution case is that on 6-12-92 at about 2.15 p.m the accused drove the bus KRC 1141 in a rash and negligent manner through Thalassery - Kuthuprarmba road and knocked down PWs 1 and 2 who were walking through the eastern road margin. PW-1 sustained serious injuries including fractures.

3. The contention of the revision petitioner is that the evidence of PWs 1 to 3 would indicate that from the opposite direction a lorry was

coming ahead overtaking a bus and hence the accused had no other option but to swerve the vehicle to the eastern side. I find that through out the trial, the defence had no such case. During the cross examination of the investigating officer, no such case has been put forward. I find that the above contention has no merit. The very nature of the offence would indicate that the accident has happened on account of the rashness and negligence on the part of the revision petitioner. The evidence of PWs 1 and 2, and PW-6 doctor, would show that PW-1 sustained fracture of Ist, 3rd and 4th ribs on the right side and 2nd and 3rd metatarsals of the right foot and the terminal phalanx of the right big toe. PW-2 also sustained injury although not of a very serious nature. The evidence of AMVI and the report shows that there was no mechanical defect to the vehicle. In the circumstances I find no reason to deviate from the findings of the courts below. The conviction is confirmed.

4. The revision petitioner has pleaded for modification of the sentence pointing out that the incident has taken place in 1992 and about 15 years have elapsed since the date of occurrence. The accused has been facing criminal proceedings so far. It is also submitted that he is without employment since the date of accident. In the circumstances, the sentence imposed for the offence under section 338 IPC is modified to

imprisonment till the rising of the court and to pay a compensation of Rs.25,000/- to PW-1 and in default to undergo simple imprisonment for 3 months and to pay a compensation of Rs. 5000/- to PW-2 and in default to undergo simple imprisonment for one month. No separate sentence is awarded for the offences under sections 279 and 337. The revision petitioner is granted 3 months time to pay the amount of compensation. The revision petitioner shall appear before the JFCM, Kuthuparamba on 25-9-2007 to receive the sentence.

The Crl. R.P is disposed of accordingly.

(K.R.UDAYABHANU)
Judge.

kvm/-